THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.19740 OF 2006

DATED: 11th DECEMBER, 2006.

Between :

Munaswamy M.V.M. ... Petitioner

And

1. Union of India, rep. by its Secretary,
   Ministry of External Affairs, New Delhi
   And another. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.19740 OF 2006

ORDER :

This writ petition is filed aggrieved by the action of the 2nd respondent in imposing penalty of Rs.5,000/- under Section 12 (1) (b) of the Passports Act, 1967.

It is stated that the petitioner was initially residing at Door No.2-2-1152, New Nallakunta, Hyderabad from where he had shifted to Door No.2-2-1103/4/6/A/23, Sanjeevnagar, Tilak Nagar, Hyderabad in the year 2005. While staying at New Nallakunta, he made an application on 31-12-2004 for a passport mentioning his permanent residential address as Main Road, B. Kothakota Village and Mandal of Chittoor District and temporary address as D.No.2-2-1152, New Nallakunta, Hyderabad. It appears that the said application was forwarded for police verification to the petitioner's native place at B.Kothakota village, Chittoor District and the police sent a report stating that the petitioner was not residing in the said address. On the basis of the same, the 2nd respondent closed the petitioner's application on 8-7-2005. Having come to know that the police verification was wrongly conducted at Kothakota, the petitioner made a representation stating that as already mentioned in his application dated 31-12-2004 he is residing at Hyderabad and though by the date of application he was residing at Door No.2-2-1152, New Nallakunta, subsequently he had shifted to Sanjeevnagar. Pursuant thereto, the petitioner was advised by the officials of the 2nd respondent to submit

Person Particular Form by mentioning the present residential address which the petitioner had furnished on 12-12-2005. Thereafter the 2nd respondent reopened the petitioner's application and forwarded the same for police verification. After thorough enquiry the police submitted a clear report on 17-1-2006. Even thereafter since no passport was issued, the petitioner approached the Passport Adalat on 8-3-2006 and as advised, he made a fresh application by paying requisite fee on 27-3-2006. Once again, the said application was forwarded for police verification and a report was sent on 9-5-2006.

Thereafter, the impugned proceedings dated 25-5-2006 and 31-5-2006 came to be passed calling upon the petitioner to pay the penalty of Rs.5,000/-. He was also called upon to furnish his previous residential address in the enclosed Person Particular Form and explanation on the ground that he has been residing in the present address for less than one year. The petitioner submitted detailed explanations dated 16-6-2006 and 9-7-2006. However, without considering the explanation, the 2nd respondent is still insisting on payment of penalty. Hence, this writ petition contending inter alia that the penalty levied was not warranted and unjustified.

In the counter-affidavit filed on behalf of the respondents, it is alleged that the petitioner in his application made in the year 2004 had wrongly shown his present address as Hyderabad. It is further stated that the application of the petitioner dated 31-12-2004 which was closed on 8-7-2005 was never reopened. It is alleged that the petitioner suppressed the factual information and applied for passport from Chittoor District in the year 2004, though he was a student of Gokaraju Engineering College, Miyapur, Hyderabad during that time and again made a fresh application in the year 2006 by furnishing a different address. In the police verification, it was found that he was residing in the premises at Sanjeevnagar only for 10 months though in the application it was stated that he was staying in the said address for

more than a year. He also failed to give any address for his remaining stay. Hence, the penalty was rightly imposed.

I have heard the petitioner who appeared in person and the learned Counsel for the respondent.

Under Section 12 (1) (b) of the Passports Act, 1967 (for short, 'the Act') whoever knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under the Act or without lawful authority alters or attempts to alter the entries made in a passport shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to Rs.5,000/- or with both.

On the basis of the said provision, the learned Counsel for the respondents contended that the petitioner is liable to pay penalty.

It is true that the petitioner was a student of an Engineering College at Hyderabad from the year 2002-2005. But he never suppressed the said fact and in his first application dated 31-12-2004 he gave his present residential address as Door No.2-2-1152, New Nallakunta, Hyderabad in a separate column in the application form where the applicant is required to furnish his present address. Since the petitioner is a native of B. Kothakota village and Mandal, Chittoor District he had also furnished the said address in the column meant for permanent address. Though in the counter-affidavit the plea of the petitioner that in his application dated 31-12-2004 he had given his present address as Hyderabad is denied, a copy of the said application has not been placed before this Court. A copy of the fresh application dated 27-3-2006 submitted by the petitioner has been placed before this Court in which he has furnished his present residential address at Column No.9 and the permanent address at Column No.10. Hence, I do not find any justifiable reason to disbelieve the version of the petitioner that in his earlier application dated 31-12-2004 he had shown his present residential address as Nallakunta, Hyderabad.

On a careful consideration of the entire material available on record, I find force in the submission of the petitioner that the police verification was wrongly conducted at B. Kothakota Village which is shown as permanent address of the petitioner instead of conducting the verification at the residential address of the petitioner furnished as New Nallakunta, Hyderabad.

Though the respondent is competent to levy a penalty under Section 12 of the Act, such power cannot be exercised arbitrarily without application of mind to the facts and circumstances of the case.

In the case on hand, absolutely there is no basis to arrive at a conclusion that the petitioner knowingly furnished any false information. The impugned orders passed by the respondent directing the petitioner to pay penalty of Rs.5,000/- are computer- generated and did not contain signature much less any reasons. That itself shows that the orders were passed mechanically without appreciating the explanation offered by the petitioner and without making any enquiry into the facts and circumstances of the case. Such orders which are vitiated on account of arbitrary exercise of power under Section 12 cannot be sustained.

Accordingly, the impugned orders dated 25-5-2006 and 31-5-2006 are set aside and the Writ Petition is allowed with a direction to the 2nd respondent to consider the application of the petitioner dated 27-3-2006 on the basis of the police verification report dated 17-1-2006 and to pass appropriate orders in accordance with law within a period of two weeks from the date of receipt of this order. No costs.

G. ROHINI, J.

Dt. 11–12-2006
gbs

Note:- CC in 3 days.